BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], BY AND THROUGH [redacted]; AND [redacted]
Petitioners,

v.

ATLANTA INDEPENDENT SCHOOL SYSTEM,
Respondent.

Docket No.: 1920101
1920101-OSAH-DOE-SE-60-Malihi

FILED
OSAH
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Kevin Westray, Legal Assistant

FINAL DECISION

[redacted], by and through his mother, [redacted], and [redacted] ("Petitioners") filed a due process complaint pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA" or "Act"), 20 U.S.C. §§ 1400 to 1482, and its implementing regulations, 34 C.F.R. Part 300, against Respondent Atlanta Independent School System ("APS" or the "District") alleging a denial of a free appropriate public education ("FAPE").

I. RELEVANT PROCEDURAL HISTORY

The initial due process hearing request was filed on December 12, 2018.[1] After attempts to resolve the matter, the parties reported to the Court on January 31, 2019, that they were unable to reduce their tentative settlement agreement to writing. On February 8, 2019, the case was continued, at the Petitioners' request, to allow them the opportunity to secure legal representation. On March 15, 2019, the Petitioners amended their complaint. On March 27, 2019, the parties participated in mediation. On April 12, 2019, the Petitioners again amended their complaint.

[1] Any claims arising before December 12, 2016, therefore, are barred by the statute of limitations. 20 U.S.C. § 1415(b)(6)(B); Mandy S. v. Fulton County Sch. Dist., 205 F. Supp. 2d 1358 (N.D. Ga. 2000), aff'd without opinion, 273 F.3d 1114 (11th Cir. 2001).

A hearing was held at the Office of State Administrative Hearings on May 13, 14, and 29, 2019. Petitioners were represented by Kenetra Malone, Esq., and APS was represented by MaryGrace Bell, Esq. After the hearing, the parties submitted proposed findings of facts and conclusions of law on August 12, 2019. For the reasons discussed below, Petitioners' request for relief is **GRANTED** in part and **DENIED** in part.

II. FINDINGS OF FACT

The claims before this Court are those set forth in the Second Amended Complaint, filed April 12, 2019. More specifically, at the hearing, counsel for the parties agreed and represented to the undersigned that the issues for resolution are (1) the District's failure to implement [redacted] Individualized Education Plan ("IEP"), (2) whether bullying resulted in a denial of FAPE, and (3) whether the failure to timely implement grade changes prevented [redacted] participation in a dual enrollment program and/or admittance to college and thus resulted in a denial of FAPE. (Transcript ("T.") 5-6, 609-612.)

A. Educational Background

1.

[redacted] is a seventeen-year-old male, who was found eligible for special education services under the categories of (1) Autism Spectrum Disorder and (2) Speech/Language Impairment. At the hearing, the District stipulated that it did not have documentation sufficient to show that [redacted] IEP had been implemented. (T. 5, 10-11, 139, 579, 599, 609; Ex. R-8.)

2.

[redacted] reenrolled in APS at Benjamin E. Mays High School ("Mays") at the beginning of his sophomore year in August 2016. He participated in the band program at Mays as a member of the percussion section. (T. 13; Ex. R-12.)

3.

[redacted] graduated from Mays with a general education diploma on May 24, 2019. He testified that he planned to attend Alabama A&M University. [redacted] testified that [redacted] was still considering where to attend college. (T. 37, 621, 683-684).

B. Bullying of [redacted]

4.

[redacted] testified that he experienced bullying at Mays beginning in the fall of 2016, the first semester of his sophomore year. (T. 614.)

5.

One example of bullying, according to [redacted], was when other students in band threw his drumsticks and told him to fetch. He testified that other students' drumsticks were thrown as well. (T. 23, 56-58).

6.

In addition, [redacted] testified that he was taunted by three female students for "a couple of weeks." School counselor Nikki Smith testified that [redacted] met in her office with a school resource officer and the assistant principal, Dr. Dante Edwards, regarding [redacted] interactions with these three students. Ms. Smith further testified that she herself investigated the incident by speaking to [redacted] teacher, but she did not suspect that there was a larger issue and did not follow up any further. (T. 53-56, 84-86, 290-294, 412-415.)

7.

[redacted] testified that there was an adult volunteer, Rodney Dorsey, who worked with the percussion section of the band, and from whom [redacted] experienced "hostility" and "a bad energy." [redacted] testified that Mr. Dorsey told [redacted] "that he would kill me" and that other

students in the band did not like [redacted] because he "talk[ed] white." [redacted] communicated with staff at Mays to discuss her concerns about Mr. Dorsey. Regarding [redacted] testimony that Mr. Dorsey said he would kill him, Richard Fowler, the school principal, testified that he determined that Mr. Dorsey had not actually threatened to kill [redacted] He further testified that he told Mr. Lyles, the band director, that Mr. Dorsey should be instructed to use appropriate language when interacting with the students. (T. 18-20, 153-154, 346-347, 460-461, 492-497.)

8.

In October of 2017, [redacted] unilaterally placed [redacted] on academic probation from band until he was able to raise his grades. [redacted] notified the band director, Mr. Lyles, that she would inform him when [redacted] could rejoin the band. On one occasion during this academic probation, [redacted] decided to support the band by attempting to attend an away event with the band program. He was late in arriving to the buses, so the percussion bus, which had started to leave, stopped for him, and [redacted] briefly boarded the bus. [redacted] was not permitted to continue with the bus, however, and it dropped him off at the bottom of the "exit hill" of the school. [redacted] testified that it was Mr. Dorsey told him to get off the bus. (T. 20-21, 45-50, 82, 336-338, 342, 615-616).

9.

[redacted] also testified that he was bullied one afternoon when several band students were in the hallway outside of his classroom speaking about an incident in which he was involved. One of the students, swinging a baseball bat, entered the classroom in which [redacted] was working with another student. [redacted] eventually left the classroom and entered another classroom to avoid the students. (T. 51-54, 83-84.)

10.

On November 9, 2017, [redacted] was assaulted by another student, "[redacted]" after participating in a game of "keep away" involving [redacted]'s shoe. This incident occurred in a breezeway outside of the band room following afternoon dismissal. [redacted] punched [redacted], causing his lip and teeth to be injured. [redacted] was disciplined. (T. 13-15, 60-63, 463; Ex. P-31.)

11.

In response to the allegations of bullying, the school principal, Mr. Fowler, became involved in working with [redacted] and ensuring that the band director, Mr. Lyles,[2] monitored [redacted] in the band program. Mr. Fowler also gave [redacted] his cell phone number. (T. 464-465, 469, 492-497.)

12.

Additionally, after the assault by [redacted], the APS Office of Employee Relations ("OER") conducted an independent investigation to determine whether [redacted] was being bullied at Mays, and, if so, whether the bullying may have been caused, in part, by Mr. Dorsey. The OER investigator interviewed twenty-four students and adults. Ultimately, she concluded that the allegations of bullying were unsubstantiated. (Ex. J-5.)

13.

Mr. Dorsey, who had ceased his volunteer work while the OER investigation was conducted, was cleared of wrongdoing and returned to the band program. However, during the fall 2018 semester, when [redacted] and [redacted] discovered that Mr. Dorsey had returned, they expressed their concerns to the band director. Thereafter, Mr. Dorsey's role with the band program ended. (T. 258, 467-468.)

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[2] Mr. Lyles has been the band director since the beginning of the 2017-2018 school year. Mr. Oliver was the band director during the 2016-2017 school year. (T. 58, 217.)

14.

[redacted] testified that he believed he was bullied when students called him a snitch, engaged in "joning" or roasting with him, or stared at him. [redacted] testified regarding her awareness of incidents of bullying, which included students threatening to beat up [redacted] in October 2017, calling him a snitch, and bumping against him in the hallway. (T. 54, 249-251, 618, 628.)

C. <u>Implementation of Grade Changes</u>

15.

In August 2018, [redacted] requested that two of the final grades that [redacted] had received at Mays be changed: (1) a band grade from the 2016-2017 school year; and (2) an engineering grade from the 2016-2017 school year. Initially, the grades were both "[redacted]" (T. 9, 201; Exhibits P-4, P-5.)

16.

Previously, during a May 24, 2017, IEP meeting, engineering teacher Maisha Mescudi stated that she was not aware that [redacted] was autistic, and that had she known, she would have "done things differently." (Joint Stipulations Pertaining to Maisha Mescudi, ¶¶ 2-3; Joint Submission of Transcript from November 15, 2018 Meeting at 4-5).

17.

Both grade changes were implemented in January of 2019. Mr. Fowler testified that the delay in implementing the grade changes was, at least in part, a result of there being a new registrar at Mays during fall of 2018. The engineering grade was changed from 61 to 75. The band grade was changed from 69 to 96. As a result of these grade changes, [redacted] GPA changed from 82.568 (cumulative weighted) to 83.154 (cumulative weighted). (T. 9, 201, 516-

517; Exhibits P-1, R-12.)

D. Dual Enrollment

18.

Mays counselor Ms. Smith testified that, for students interested in dual enrollment, Atlanta Metropolitan State College ("Atlanta Metro") hosts meetings at Mays to explain the application process. During these meetings, the Atlanta Metro representative notifies interested applicants of the various forms which must be completed or provided. These include an application, a birth certificate, a parental consent form, a course interest form, and a certified transcript. Students who wish to participate in dual enrollment must also qualify based on their GPA, SAT, ACT, or Accuplacer score. (T. 400-403.)

19.

As an eleventh-grade student, [redacted] attended a meeting in spring 2018 in which a representative from Atlanta Metro outlined the process for applying for dual enrollment. [redacted] filled out a paper application and provided it to the representative. There is no indication that [redacted] submitted a complete application with all required documentation. [redacted] did not follow up with his assigned eleventh-grade counselor, Mr. Ragland, regarding the status of his application for dual enrollment. (T. 30-32, 400-403.)

20.

At the beginning of his twelfth-grade year, in the fall of 2018, [redacted] newly assigned counselor, Ms. Smith, held a meeting for all seniors outlining the dual enrollment and college admissions processes. Ms. Smith also held individual meetings with each student. [redacted] did not express any interest in dual enrollment to Ms. Smith and did not attempt to apply for dual enrollment during his senior year. According to Ms. Smith, [redacted] SAT score and GPA met

the requirements for dual enrollment at Atlanta Metro. She further testified that, in reviewing a student's GPA to determine whether to accept the student for dual enrollment, Atlanta Metro considers the student's grades in core content areas only, as opposed to electives, such as engineering and band. (T. 395-407.)

E. College Admissions

21.

[redacted] submitted two rounds of college applications. He first submitted college applications in the fall of 2018. He applied or reapplied to several schools in February 2019 after his transcript was altered to reflect different grades in engineering and band. [redacted] testified that he applied to Howard University, his top choice, on February 14, 2019. (T. 9, 34, 36-37.)

22.

[redacted] testified that he was admitted to four or five colleges. During the first week of April 2019, he made the decision to attend Alabama A&M University. He was not accepted to Howard University. On May 29, 2019, [redacted] testified that [redacted] was still considering whether to attend a college located in the metro-Atlanta area. (T. 37-38, 683-684.)

F. Relief Sought

23.

[redacted] testified regarding her inquiries into the cost of music lessons, camp, and tutoring, as well as the current cost of therapy. She also testified that she is requesting compensatory education based on the missed social skills services and the assistance of an executive functioning coach. (T. 681-689, 694-695.)

24.

Dr. Katika Lovett, the District's Executive Director for Special Education, offered expert

testimony as to the relief that would be appropriate for [redacted] She identified support in executive functioning ("be it some sort of one-to-one or tutorials or even, you know, some sort of academic program that could contribute to increases in his executive functioning"). She stated that "the missed services in the area of speech language therapy would be an appropriate relief" as well as "something around the area of social skills." Dr. Lovett testified that those three areas would be "somewhere to start." As to the recommended duration of services, Dr. Lovett testified that "about eight weeks" of services in those areas "would be helpful," based on her experience with providing such services in a "ramped up fashion" to help students over summer breaks. (T. 596-599.)

III. CONCLUSIONS OF LAW

1.

Petitioners bear the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49, 62 (2005). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Under both the IDEA and Georgia law, students with disabilities have the right to a free appropriate public education, or "FAPE." See 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1-300.102; Ga. Comp. R. & Regs. 160-4-7-.01(1)(a). The Supreme Court has developed a two-part inquiry to determine whether a school district has provided FAPE: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 (1982). Ultimately, a school must offer an IEP "reasonably calculated to enable a child to make

progress appropriate in light of the child's circumstances." Endrew F. v. Douglas Cty. Sch. Dist., 137 S. Ct. 988, 1001 (2017).

3.

The Court of Appeals for the Eleventh Circuit recently explained that although the "guideposts" set forth in Rowley and Endrew F. are useful for courts evaluating claims related to the *content* of an IEP, there is a "second species of IDEA claim" that arises when schools "fail to meet their obligation to provide a free appropriate public education by failing to implement the IEP *in practice*." L.J. v. Sch. Bd., 927 F. 3d 1203, 1211 (11th Cir. 2019).[3] An implementation claim, as it is termed by the Court of Appeals, requires a different inquiry, *i.e.*, whether the school has materially failed to implement a child's IEP. Id. Such a failure occurs when "a school has failed to implement substantial or significant provisions of a child's IEP." Id. Among other considerations, a court should look to "the proportion of services mandated [by the IEP] to those actually provided, viewed in context of the goal and import of the specific service that was withheld." Id. at 1214 (citations omitted).

4.

Here, the District has stipulated that it does not have documentation sufficient to show tha[redacted] IEP was implemented. The undersigned is left to assume either that, at worst, the IEP was not implemented at all, or, at best, the District failed to implement substantial or significant portions of the IEP. It follows that [redacted] as a result of a material failure to implement the IEP, was denied FAPE. Under the standard set forth by the Court of Appeals, "schools [are required] to actually deliver on the education plans that they agree to and that the

[3] Although the decision by the Eleventh Circuit in L.J. was issued on June 26, 2019, after the conclusion of this administrative hearing, the undersigned will follow the standard the Eleventh Circuit has articulated. The Eleventh Circuit, in deciding L.J., considered similar standards already set forth by other circuits. See L.J., 927 F.3d. at 1213 n.6 (citing decisions by the Fifth Circuit, the Fourth Circuit, the Second Circuit, and the Eighth Circuit). Moreover, the parties submitted proposed findings of fact and conclusions of law on August 12, 2019, and therefore had the opportunity to address this recent statement of law.

IDEA requires. And in the face of a material deviation from those plans, they will be held to account." L.J., 927 F.3d. at 1216.

5.

Before turning to a consideration of the appropriate remedy for this denial of FAPE, it is necessary to address the two additional claims advanced by the Petitioners. First, the Petitioners allege that bullying experienced by [redacted] resulted in a denial of FAPE. Second, they allege that because the band director and engineering teacher were unaware of the accommodations included in the IEP, they each assigned him a lower grade than he otherwise would or could have earned, and that after it was determined these two grades should be changed, there was a delay that prevented [redacted] participation in a dual enrollment program with a local college and/or prevented his being accepted to Howard University (the college of his choice); ultimately, these "missed opportunities," as the Petitioners characterize them, amounted to a denial of FAPE. (See Second Amended Complaint; T.5, 609-610.) The Court will discuss each of these claims in turn.

6.

First, regarding bullying, the Court is sympathetic to [redacted] The evidence reflects that [redacted] was treated poorly, even shamefully, by others and that he suffered from it. The question before this tribunal, however, is whether the IDEA was violated.

7.

The Court is unaware of a case within the Eleventh Circuit addressing bullying as resulting in a denial of FAPE. However, the Courts of Appeals for the Ninth Circuit and the Third Circuit have determined that it is possible for bullying or harassment to be so severe and prolonged that it deprives a child of access to educational benefits and thus violates the IDEA.

See M.L. v. Federal Way Sch. Dist., 394 F.3d 634, 650-51 (9th Cir. 2005) ("If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied a FAPE."); Shore Reg'l High Sch. Bd. of Educ. v. P.S., 381 F.3d 194, 201-02 (3d Cir. 2004) (lack of school environment free from harassment was grounds for finding a denial of FAPE). "When responding to bullying incidents, which may affect the opportunities of a special education student to obtain an appropriate education, a school must take prompt and appropriate action," including investigating and preventing harassment in the future. T.K. v. New York City Dep't of Educ., 779 F. Supp. 2d 289, 317 (E.D.N.Y. 2011). Otherwise, the provision of FAPE may be at issue. "It is not necessary to show that the bullying prevented all opportunity for an appropriate education, but only that it is likely to affect the opportunity of the student for an appropriate education. The bullying need not be a reaction to or related to a particular disability." Id.

8.

The undersigned has carefully considered the evidence presented by the parties regarding the experience of [redacted] and the responses of school staff and the District, in light of the test set out in [redacted] id., and the 2010 Dear Colleague Letter[4] cited therein. The Petitioners have not proven by preponderance of the evidence that the treatment of [redacted] was bullying or harassing treatment that was so severe or prolonged that it resulted in a denial of FAPE. Nor have they shown that the responses by staff, including Mr. Fowler, Dr. Edwards, Ms. Smith, the OER, and others, were not prompt or appropriate. Based on the evidence presented at the hearing, the undersigned cannot conclude that [redacted] was denied FAPE because of bullying.

[4] U. S. Dep't of Educ., Office of Civil Rights, Dear Colleague Letter: Bullying and Harassment, at 2 (Oct. 26, 2010), *available at* https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf.

9.

Next, as to the allegations regarding the grade changes and missed opportunities, the Court concludes that the argument advanced by the Petitioners is too speculative. The evidence does not support a conclusion that [redacted] would have participated in dual enrollment or been admitted to Howard University but for the delay in changes two grades on his transcript. Neither does it support the leap in logic from either of these two missed opportunities to the denial of FAPE under the IDEA. As for dual enrollment, the record shows that [redacted] did not follow through with the necessary steps to apply as either an eleventh-grade student or a twelfth-grade student. As for [redacted] college applications, and in particular, his application to Howard University, no evidence was introduced to show that, if [redacted] had been provided an updated transcript months earlier, reflecting the new grades in engineering and band, he would have received a different answer from any of the colleges to which he applied. Based on the evidence presented at this hearing, this Court finds that Petitioners failed to meet their burden in demonstrating that either of these particular outcomes was a result of (or somehow resulted in) the School District's failure to provide FAPE.

10.

Even though these two theories have not been proven by Petitioners by a preponderance of the evidence, the Court cannot overlook the fact that the IEP was not sufficiently implemented during the time period at issue in this case. As noted previously, the Eleventh Circuit has stated that "schools [are required] to actually deliver on the education plans that they agree to and that the IDEA requires. And in the face of a material deviation from those plans, they will be held to account." L.J., 927 F.3d. at 1216.

11.

The IDEA allows an administrative law judge to fashion an appropriate remedy, and

compensatory education is an available option under the Act to make up for denial of a free and appropriate public education. See Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1280 (11th Cir. 2008); Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 527 (D.C. Cir. 2005) (an inquiry into compensatory relief must be "qualitative, fact-intensive, and above all tailored to the unique needs of the disabled student"). The circumstances of this case make fashioning a remedy exceedingly difficult, however. The parties have provided limited evidence as to the appropriate relief. For example, [redacted] testified as to her understanding of the costs of music lessons, tutors, therapy, and so on. Dr. Lovett testified as to what she believed would be "somewhere to start" with a remedy, and she based her eight-week recommendation on a typical student's experience with "ramping up" over summer break. The Court, therefore, is faced with the impossible task of crafting an equitable remedy based on scanty information, rather than a clear understanding of what would place [redacted] in the position he would otherwise have been in. See, e.g., Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt (Nesbitt II), 583 F. Supp. 2d 169, 172 (D.D.C. 2008) (holding that compensatory relief must be "a well-articulated plan the reflects [the student's] current educational abilities and needs and is supported by the record"). [redacted] has graduated from high school, he may have started college in or out of state, he is older and in a different stage of his education, and he is likely facing different challenges and situations than he did at the time the IEP should have been implemented.

12.

An imperfect solution would be to conclude that the Petitioners have not met their burden to show what the proper remedy at this time would be. For the Court to rest on that basis would be to ignore the conclusion that the District did not provide FAPE and, further, to ignore the testimony of the District's own expert witness and Director of Special Education, who identified,

albeit as a general matter, what services would be necessary as a start to make J.H.-M. whole. The Court declines to ignore those important aspects of this case.

13.

Although the Court is not in a position at this time to fashion equitable relief, it can make certain limited and preliminary conclusions as to the appropriate remedy in this case. First, turning to the relief requested in the Second Amended Complaint, as further clarified at the hearing and in the Petitioners' Proposed Findings of Fact and Conclusions of Law, the undersigned is doubtful that appropriate relief would include items that appear to be related to the claims that this Court has denied—namely, the claims regarding bullying and the grade change. As an example, it appears that the Petitioners' request for payment for four college-level courses is tied to their claim regarding dual enrollment and college admissions. In contrast, the undersigned finds that the appropriate relief *may* include services such as or relating to speech therapy, executive functioning, or social skills. But, as discussed above, "without an adequate record, . . . [a student's] needs cannot be accurately measured or an award properly individualized." Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt (Nesbitt I), 532 F. Supp. 2d 121, 124 (D.D.C. 2008) (citing Branham v. Dist. Of Columbia, 427 F.3d 7, 12 (D.D.C. 2005)).

14.

In order to ascertain an appropriate award of compensatory education, an administrative law judge may order that additional assessments be performed. See, e.g., Lopez-Young v. Dist. of Columbia, 211 F. Supp. 3d 42, 57 (D.D.C. 2016) (citation omitted); Bell v. Bd. of Educ. of the Albuquerque Pub. Schs., 2008 U.S. Dist. LEXIS 108748, at *101-102 (D.N.M. Nov. 28, 2008) (ordering school district to enlist a consultant or consultants to "figure out an appropriate

scheme" of compensatory education and then tutor the student or secure education services that implement the remedial plan). The undersigned, therefore, **ORDERS** as follows:

- The parties shall work together to identify an independent, qualified evaluator to review [redacted]'s IEP documents, including, particularly, the services that should have been delivered during the relevant time period, beginning December 12, 2016, and to prepare a written assessment of the current appropriate compensatory relief. The assessment should be sufficiently fact-specific so as to provide the parties with a reasonable estimation of the educational benefits that likely would have accrued had [redacted] been receiving uniquely tailored special education services for the relevant time period. The cost of the evaluator's services shall be paid by the District. The parties shall provide a joint status report within ten business days of the date of this Final Decision informing the Court of the name of the evaluator that the parties have chosen.
- If the parties are unable to agree on the designation of an evaluator within ten business days of the date of this Final Decision, the parties shall instead file a joint status report on that date informing the Court of their failure to come to an agreement and providing the Court with a list of four evaluators (two provided by each party) and their resumes, so that the Court may decide which evaluator will perform the assessment.
- Once an evaluator (whether chosen by the parties or by the Court) has conducted the assessment, if the parties agree as to the evaluator's recommendations, they shall inform the Court of the same, and the Court will determine whether and to

what extent those recommendations shall constitute the remedy of compensatory education in this matter.

- If the parties do not agree as to the evaluator's recommendations, however, the parties shall notify the Court that a hearing is required, and the hearing record will be reopened for the limited purpose of the presentation of additional evidence and argument regarding an appropriate compensatory education award. The additional evidence shall include the results of the assessment ordered above and testimony by the evaluator.

IV. DECISION

For the reasons herein, Petitioners' request for relief is **GRANTED** in part and **DENIED** in part. The Court concludes that the District denied FAPE by failing to implement the IEP and that some form of compensatory education is warranted. The appropriate award of compensatory education shall be determined once the assessment outlined above has been completed. **To summarize the process explained above**: **FIRST,** the parties shall designate an independent, qualified evaluator to review the services in [redacted] IEP that should have been delivered during the relevant time period and shall inform the Court of this designation via joint status report within ten days of the date of this Final Decision (if the parties are unable to agree on the designation, they shall provide a joint status report with four names [two from each party], and the Court will choose one). **SECOND,** once the evaluator has completed his or her assessment, if the parties agree with the assessment and the recommendations, the parties shall inform the Court of the same via a joint status report; if the parties do not agree with the evaluator's recommendations, the parties shall notify the Court via joint status report that a hearing is required, and the hearing record will be reopened for the limited purpose of the

presentation of additional evidence and argument regarding an appropriate compensatory education award.

SO ORDERED, this 27th day of September, 2019.

Michael Malihi
Administrative Law Judge